

Section 8.5

CONTRACT DELINQUENCY

8.5.1 Purpose

To provide an efficient, uniform method for identifying, monitoring, and acting upon delinquent contracts so as to encourage Contractors to concentrate their manpower and equipment on their delinquent contracts.

8.5.2 Authority

Section 337.16, Florida Statutes (F.S.) - Establishes grounds for disqualifying Contractors from bidding on Florida Department of Transportation (Department) projects. Instructs the Department to deny or revoke the Certificate of Qualification of a Contractor receiving repeated suspensions within specified time periods. This rule also defines the additional suspension periods to be applied.

Section 120.57, Florida Statutes - Establishes the Contractor's rights to an Administrative Proceeding.

Rule 14-22.012, Florida Administrative Code (F.A.C.)

- 1) Allows the Department to suspend any Certificate of Qualification, prohibiting the Contractor from bidding on Department contracts regardless of the dollar amount of the bid, and from acting as a subcontractor or material supplier on any Department contract or project during the period of suspension, if the Contractor is determined to be delinquent in progress on a previously awarded contract.
- 2) Allows the Department to suspend any Certificate of Qualification of any Contractor who is an affiliate of a Contractor which has had its a Certificate of Qualification suspended, and the Contractor is dependent on the affiliate for personnel, equipment, bonding capacity, or financial resources.
- 3) Instructs the Department to inform the Contractor in writing of its intent to suspend the Contractor's Certificate of Qualification prior to suspending any Certificate of Qualification. This rule also defines the method of notification to be used by the Department, and the recourse available to the Contractor.

Section 14-22.0011, F.A.C. - Defines the conditions under which companies are considered affiliates of each other for purposes of this provision.

Standard Specifications, Section 8-3.2 - Failure to finalize either the initial or a revised schedule in the time specified will result in withholding of all contract payments until the schedule is approved.

FHWA Approved: July 28, 2004

8.5.3 Definitions

Allowed Contract Time: The number of days set forth in the contract plus any time extension granted by the Department under the contract specifications.

Contractor Delinquency Report: A monthly computerized listing of projects and pertinent project data for all projects which are delinquent as of the last monthly estimate of completed work.

Contractor Suspension Report: A computerized listing of Contractors whose Certificates of Qualification to bid on Department projects are currently suspended or have previously been suspended, and the number of projects/times such Contractors have had their certificate suspended either due to the delinquent condition of a project or for other reasons which constitute good cause as per [**Section 337.16, Florida Statutes**](#).

Delinquent Contract: The allowed contract time for performing the work has expired and the Contractor has not completed the contract work.

Delinquent Contractor: A Contractor with whom the Department has a contractual agreement for completion of the work on a delinquent contract.

8.5.4 Contractor Delinquency Report

(A) District Level Responsibilities

Delinquent contracts are identified on the **Contractor Delinquency Report**. A preliminary **Contractor Delinquency Report** can be obtained by each District from the Construction Automated Reporting System (CARS). This report should be obtained immediately after each District has updated the file with the latest estimated data for progress payments to Contractors for completed work.

- 1) This Delinquent District contract will not appear on the ***Contractor Delinquency Report***, but must be identified and reviewed by the Districts.
- 2) Each District Construction Engineer or a designee (Assistant District Construction Engineer) will review the projects in their District appearing on the ***Contractor Delinquency Report***, as well as delinquent District contracts, within three (3) working days of receipt of the preliminary ***Contractor Delinquency Report***.
- 3) The District Construction Engineer makes recommendations for agency actions in a memorandum or electronic mail message to the Director, Office of Construction. Recommendations for actions on delinquent District contracts will be included.

8.5.5 Delinquency Notices

(A) Central Office Level Responsibilities

Delinquency Notices for all Department construction contracts, including District contracts, will be prepared by the State Construction Office to ensure uniform and consistent criteria for those actions, and signed by the Secretary of the Department of Transportation since they represent final agency actions. The Secretary of the Department has delegated to the Chief Engineer the authority to sign the ***Delinquency Notice***. The ***Delinquency Notices*** will be sent via Certified Mail, "next day delivery", ***Return Receipt Requested***.

Delinquency Notices will be issued by the State Construction Office when the allowable contract time for performing the work has expired and the contract work is not complete.

8.5.6 Suspension of Certificate of Qualification

(A) Central Office Level Responsibilities

A ***Delinquency Notice*** shall inform the Contractor of the Department's intent to suspend the ***Certificate of Qualification*** of the Contractor and its affiliates to bid on Department projects.

- (1) The written notice shall contain:
 - a) The specific facts which show that the Contractor is delinquent and which justify the suspension.
 - b) A statement that within ten (10) days of receipt of the notice of intent to suspend, the Contractor has the right to request an Administrative Hearing pursuant to

Section 120.57, F.S., by filing a written request with the Clerk of Agency Proceedings. The Contractor's request for hearing shall be in writing and shall be filed with the Clerk of Agency Proceedings, Mail Station 58, Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0450 within ten (10) days of receipt of the notice of intent to suspend.

The request for hearing shall include:

- The name and address of the party making the request.
 - A statement that the party is requesting a formal hearing. **Florida Statutes** require a formal proceeding whenever the proceeding involves a disputed issue of material fact, unless waived by all parties. Department policy is not to waive a formal proceeding in any case involving a disputed issue of material fact. All specific facts and circumstances that the Contractor believes legally excuse the unsatisfactory progress on the project.
- c) A statement that the suspension shall be conclusive and final agency action if no request for a hearing is filed with the Clerk of Agency Proceedings within ten (10) days of receipt of the notice of intent to suspend.

If the Contractor fails to file a request for hearing within ten (10) days of receipt of the notice of intent to suspend, the suspension shall become conclusive and final agency action, and the period of suspension of the **Certificates of Qualification** of the Contractor and its affiliates shall begin on the eleventh (11th) calendar day following the Contractor's receipt of the notice of intent to suspend, and shall continue as set forth in **Rule 14-22.012, (F.A.C.)**.

If the Contractor files a timely request for hearing, the hearing shall be held within thirty (30) days of receipt by the hearing officer of the request for hearing. The officer shall complete and submit to the agency and all parties a recommended order within fifteen (15) days after the hearing.

If the Contractor is determined to be administratively delinquent, the **Certificates of Qualification** of the Contractor and affiliates shall be suspended for a period as set forth in **Rule 14-22.012, F.A.C.**, even if the delinquency is cured during the pending administrative proceedings.

The suspension shall begin on the date of the final order and run continuously for the number of days the Contractor is determined to be delinquent as set forth in **Rule 14-22.012, F.A.C.**

8.5.7 Administrative Hearings

(A) District Level Responsibilities

The District Construction Engineer and any necessary support staff will be required to defend the Department's position at any administrative proceeding pertinent to a declaration of delinquency by the Department.

8.5.8 Period of Suspension of Certificate of Qualification

When a Contractor is declared administratively delinquent, the period of suspension of the **Certificates of Qualification** of the Contractor and affiliates to bid on Department projects due to a final declaration of delinquency shall be for a period of time equal to the number of days between the calendar day that the allowed contract time expired and the calendar day of conditional or final acceptance of the work by the Department plus additional days as may be required by [Section 337.16 \(1\)\(c\), F.S.](#)

8.5.9 Conditions of Suspension of Certificate of Qualification

During the period of suspension of the **Contractor's Certificate of Qualification**, the Contractor and affiliates may not bid on any Department contract, regardless of dollar amount, nor be a subcontractor on any Department contract.

8.5.10 Work Progress Schedule

(A) Resident Level Responsibilities

The Project Administrator will ensure that each Contractor submits to the Department, on a prescribed form, an acceptable work progress schedule for the project, showing in detail the working days on which he expects to begin and complete each of the various major items of work.

It is also important that when a contract time extension is granted or a significant amount of time is authorized by Supplemental Agreement, the Contractor be required to submit a revised work progress schedule for acceptance by the District Scheduling Engineer or Resident Engineer.

8.5.11 Contractor Suspension Report

(A) Central Office Level Responsibilities

The State Construction Office has developed and will maintain a file in the Construction Automated Systems Database and the list will also be posted on the State Construction Office web site in both the internet and the Department infonet which identifies Contractors whose Certificate of Qualification to bid on Department projects is currently or has previously been suspended, either due to the delinquent condition of a project or for other reasons which constitute good cause as per **Section 337.16, F.S.**

This historical record of certificate suspensions (**Contractor Suspension Report**) will be used by the State Construction Office in administering **Section 337.16(1)(c), F. S.**, which provides for an additional period of suspension of a **Contractor's Certificate of Qualification** to bid on Department projects as a result of repeated suspensions.

(B) District and Resident Level

The Construction Automated Reporting System provides instructions allowing all Districts to browse this file and to request a printout of the current **Contractor Suspension Report**.